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**“Take Down Notice” AND  
Request for Removal of Repeat Infringer  
Under Digital Millennium Copyright Act, 17 U.S.C. § 512**

February 16, 2017

GoDaddy.com, LLC  
Attn.: Copyright Department  
14455 N. Hayden Rd., Suite 219  
Scottsdale, AZ 85260  
CopyrightClaims@GoDaddy.com

Wild West Domains  
Attn.: Copyright Agent  
14455 N. Hayden Road, Suite 219  
Scottsdale, AZ 85260  
copyrightclaims@secureserver.net

Cloudflare, Inc.  
Attn: Legal Department  
101 Townsend St.  
San Francisco, CA 94107  
dmca@cloudflare.com

**VIA FIRST CLASS MAIL AND EMAIL**

**RE: Take Down Notice and Request for Removal of Repeat Infringer Under DMCA:  
www.GerlachReport.com [IP 104.20.7.229]**

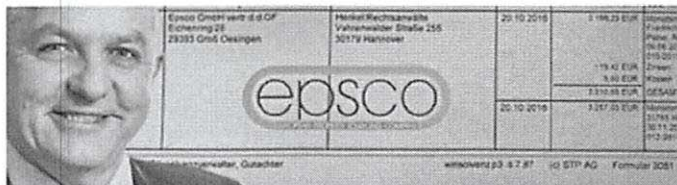
Dear Sir or Ma'am:

We are intellectual property counsel to Dolphin Trust GmbH (“Client”). This letter serves as formal notice under the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512, of repeat copyright infringement of our Client’s protected materials by your customer at the website www.GerlachReport.com (“Infringing Site”). We thus request that you (1) immediately remove new infringing content, and (2) permanently remove the Infringing Site as a repeat infringer.

**a) Background**

Our Client owns copyrights in various photographs and images (“Copyrighted Content”). Over the last two months, our Client has sent at least four DMCA takedown notices (through other counsel) to alert you of blatant copyright infringement of our Client’s Copyrighted Content on the Infringing Site, which constitutes defamation, violation of privacy, and potentially extortion.

As demonstrated by the below images and descriptions of events, the Infringing Site has blatantly copied and published our Client’s Copyrighted Content numerous times (typically by republishing a photograph of our Client’s executive with different backgrounds).



DMCA notice submitted to GoDaddy; notified of website suspension on 1/19/17.

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DMCA notice submitted to GoDaddy; content was removed before 1/19/17 response.

**Charles Smithurst**

Charles Smithurst is the CEO of Dolphin Capital Credit, owner of Lord Street Funding and the owner of Phoenix Investment.

After spending 17 years in the tech industry, Charles formed his own financial company and also started with his property development. After working with Lord Street Holdings and Phoenix Investment since 1999, Charles founded Dolphin Capital Credit. It is one of the top 5 financial companies and the most active in Heritage Building with a focus on new trends through its business to be the most successful property developer to enter the Asian market. Dolphin Capital Credit has a track record of more than 15,000 completed units and manages over 100,000.

More recently, Dolphin Capital Credit merged with a financial institution based on the financing and funding work exchange, Four Capital AG. This new acquisition involves the financial and human expertise of both Dolphin Capital Credit and Four Capital AG, strengthening Dolphin Capital's presence in the markets. With an enlarged pool of investors and increased opportunities for growth, Dolphin Capital is set to expand its business and intensity to reach internationally.



DMCA notice submitted to GoDaddy; content was removed on 1/19/17.



DMCA notice submitted to GoDaddy and CloudFlare; content was removed on 1/25/17.

As a result of our Client's repeated DMCA notices, the Infringing Site has been shut down at least twice. However, once the Infringing Site removes the infringing content, the infringer is able to reactivate the Infringing Site, thus causing continued blatant infringement.

**b) Take Down Notice Under DMCA**

Since our Client's prior DMCA notices summarized above, the Infringing Site has copied and published additional Copyrighted Content onto the Infringing Site as identified below:



<http://www.gerlachreport.com/news/gerlachreport-die-meistgelesenen-berichte-2017>



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<http://www.gerlachreport.com/news/charles-smethurst-betrug-mit-fingierten-rechnungen>



<http://www.gerlachreport.com/news/smethurst-lenz-warm-wonderful-in-den-knast>



<http://www.gerlachreport.com/>



<http://www.gerlachreport.com/news/dolphin-trust-unternehmen-vor-dem-kollaps>

We thus request that you immediately remove the new infringing content at the links above.

**c) Request for Removal of Repeat Infringer Under DMCA**

Our Client is incurring substantial costs and fees in monitoring and reporting this repeat infringement. As indicated by the above examples, the individual DMCA notices and resulting limited suspension of the Infringing Site are utterly ineffective because the infringing party simply reactivates the Infringing Site with additional infringing content. We therefore demand that you immediately and permanently terminate the Infringing Site and related infringing account(s).

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As you know, DMCA limitations on liability are only applicable to a service provider who:

[H]as adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers. 17 U.S.C. § 512(i)(1)(A) (emphasis added).

A service provider "implements" a policy if "it has a working notification system, a procedure for dealing with DMCA-compliant notifications, and if it does not actively prevent copyright owners from collecting information needed to issue such notifications." *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1109–10 (9th Cir. 2007). Further, implementation is "reasonable" if, under "appropriate circumstances," the service provider "terminates users who repeatedly or blatantly infringe copyright." *Id.*; see also *In re Aimster Copyright Litig.*, 334 F.3d 643, 655 (7th Cir. 2003) ("The common element of its safe harbors is that the service provider must do what it can reasonably be asked to do to prevent the use of its service by 'repeat infringers.'").

Additionally, we note your policy on repeat infringers is to "provide for the termination, in appropriate circumstances, of [your] customers and account holders who repeatedly violate this policy or are repeat infringers of copyrighted works, trademarks or any other intellectual property."

Given the above, we demand that you immediately and permanently disable and remove the Infringing Site as a repeat infringer and terminate all related accounts. Should your customer's website(s) continue to infringe on our Client's intellectual property rights, our Client will promptly seek all available legal remedies, including against you, in court.

**d) Necessary Information**

In supplement to our Client's prior DMCA notices, additional information needed to comply with our request is outlined below:

1. Identity of the Copyrighted Work That Has Been Infringed. Our Client owns copyrighted photographs and images, including located at:

- <http://www.cash-online.de/wp-content/uploads/2014/09/smethurst.jpg>
- [https://www.youtube.com/watch?v=7-Y28F\\_NpCU](https://www.youtube.com/watch?v=7-Y28F_NpCU)
- <http://www.cash-online.de/wp-content/uploads/2014/09/smethurst.jpg>
- <https://twitter.com/ChSmethurst>
- [https://pbs.twimg.com/profile\\_images/819249566398693376/JsCx3AgL.jpg](https://pbs.twimg.com/profile_images/819249566398693376/JsCx3AgL.jpg)
- [http://www.openpr.de/images/articles/l/a/la2443259\\_g.jpg](http://www.openpr.de/images/articles/l/a/la2443259_g.jpg)

2. Identity of the Material That is Infringing Our Client's Copyrighted Work. Your customer is maintaining materials that infringe on our Client's copyrights at the website located at [www.GerlachReport.com](http://www.GerlachReport.com) and, in particular, at:

- <http://www.gerlachreport.com/>
- <http://www.gerlachreport.com/news/dolphin-trust-unternehmen-vor-dem-kollaps>
- <http://www.gerlachreport.com/news/gerlachreport-die-meistgelesenen-berichte-2017>
- <http://www.gerlachreport.com/news/charles-smethurst-betrug-mit-fingierten-rechnungen>



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- <http://www.gerlachreport.com/news/smethurst-lenz-warm-wonderful-in-den-knast>

3. Contact Information for Our Client. Please send all correspondence on this matter to:

Liana W. Chen  
KRONENBERGER ROSENFELD, LLP  
150 Post Street, Suite 520  
San Francisco, CA 94108  
UNITED STATES  
(415) 955-1155 ext. 118  
(415) 955-1158 Fax  
Liana@KRInternetLaw.com

4. Contact Information for the Infringer(s): The only information we have for the infringer(s) is as follows:

Newsroom LLC  
Coastal Highway  
Lewes, Delaware 19958  
(302) 645-7400  
newsroomllc@protonmail.com

5. Good Faith Statement & Affidavit. Please see the attached affidavit.

e) Conclusion

Please promptly confirm that you will (1) immediately remove the new infringing content described above, and (2) immediately and permanently remove the Infringing Site as a repeat infringer and terminate the related account(s). As indicated, if you and your customer(s) continue to publish and distribute the infringing content or unlawfully exploit our Client's intellectual property rights in any way, we will take all necessary legal action.

This letter does not constitute an exhaustive statement of all of our Client's rights, claims, contentions, or legal theories regarding this matter, all of which are hereby expressly reserved.

If you have any questions about this notice or want to discuss the matters raised herein, please contact me at 415-955-1155, ext. 118, or at Liana@KRInternetLaw.com.

Sincerely,

KRONENBERGER ROSENFELD, LLP



Liana W. Chen

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**Affidavit in Support of Take-Down Notice**

I, Charles Smethurst, declare the following:

1. I have a good faith belief that use of the copyrighted material described in the attached letter, that appears on the allegedly infringing web page(s) as described in the attached letter, is not authorized by the copyright owner, its agent, or the law.
2. I swear, under penalty of perjury, that the information in this notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Date: February 16, 2017

Signature: \_\_\_\_\_

